



Ireland's Department of Enterprise, Trade and Employment, October 2023

## Public consultation on the proposal on prohibiting products made with forced labour on the Union market

Submission by Anti-Slavery International

***Founded in 1839, we are the oldest international human rights organisation in the world. We draw on our experience to work to eliminate all forms of slavery and slavery like practices throughout the world. We work in partnership with our supporters, governments, businesses, like-minded organisations and global movements to bring about long-term, sustainable change.***

### 1. Introduction

Anti-Slavery International welcomes the European Commission's and the European Parliament's legislative proposals for a Regulation prohibiting products made with forced labour on the Union market. We believe this Regulation is an essential step towards building a smart mix of tools to help eliminate forced labour across the world, as per EU commitments. We welcome in particular the wide scope of the proposals, in that they cover all products from all regions and all company sizes, big and small. We recognize that the initial intention of this public consultation was to gather inputs on the Commission's proposal, but given the recent publication of the Parliament's proposal, we have incorporated elements from our analysis on both texts.

The use of forced labour remains widespread, as ILO [estimates](#) the global number of people in forced labour at 27.6 million. We need urgent, meaningful action and laws to tackle the exploitation of workers around the world. **Although a step in the right direction, the current regulation proposals are not enough for the 17.3 million people in forced labour in the private sector and the 3.9 million people in state-imposed forced labour.**

For the upcoming Regulation to be truly effective, improvements to both texts must still be made. **Crucially, the law must be designed to place workers at the heart and, thus, to protect human rights on a global scale.** The law must not only stop goods being traded or retailed, but rather incentivise meaningful action against forced labour. As per the Parliament's position, this requires the law to be designed to incentivise the provision of remediation to workers trapped in forced labour, and to prevent the potential of any unintended consequences when using such a trade and market tool to address forced labour (see point 2 for more details on remediation). Further, the Regulation must address state-imposed forced labour in EU supply chains, for example by including requirements on mapping, tracing and public disclosure of supply chains and allowing for regional bans with a reversal on the burden of proof for products from countries/regions where there is credible evidence of state-imposed forced labour.

We call on the Government of Ireland to use its position to ensure that negotiations for the final text of the Forced Labour Regulation remain victim-centric and that the text allows for the practical use of the law to prohibit the trade of forced labour goods within the EU Market.

### 2. Key recommendations

Our recommendations to strengthen the regulation include:

1. **Investigation process.** Overall, the process of pre-investigation, investigation, final decision, remediation and further enforcement process needs to be reformulated to be worker and remedy centered. While we welcome the attention paid to due diligence measures undertaken by companies under investigation as a key element to avoid irresponsible disengagement, we underscore that **due diligence should not be held as a shield against the opening of an investigation**. Crucially, the **pre-investigation must focus only on the determination of whether there is a substantiated concern of forced labour**. However, the role of due diligence could be considered in the investigation stage in that it, as above, allows for companies to prove adequate remediation (or support for remediation) has been meaningfully provided and measures have been introduced to prevent recurrence of forced labour, *prior* to any decision to destroy products. The use of audits and certifications should not equate to meaningful due diligence or evidence of effective remediation, nor should they be deemed a sufficient defense to ward off further investigation.
2. With regard to **remediation**, we welcome the Parliament's position of **including remediation** as a prerequisite to lift a ban. Remediation of forced labour should be understood as the process of ensuring that persons subjected to forced labour have access to appropriate and effective remedies aim to repair the damage caused by forced labour and can take the following forms: compensation, restitution, satisfaction, guarantees of non-repetition, and rehabilitation. In this context, the elimination of forced labour is an essential component of the remediation of forced labour, but it is not viewed as a stand-alone remedy. Therefore, the mere requirement of eliminating forced labour does not guarantee that victims of forced labour will receive an appropriate and effective range of remedies. In proving the provision of remedy and preventative measures, companies **must not be allowed to rely on code of conducts, social audits, and other contractual clauses** that have already been proven wholly ineffective to meaningfully address forced labour in companies' value chains.
3. **Evidentiary standards.**
  - Evidentiary standards that need to be met **prior to the start of the investigation process** should be lower. To be implementable, the proposed legislation should foresee appropriate lower evidentiary standards to initiate the investigation and to adopt a decision. The available sanctions should, similarly, be adapted as appropriate. For example, the US Customs and Border Protection (CBP) authorities use "reasonable but not conclusive" as the evidentiary standard to issue a "Withhold Release Order" (WRO) that allows the re-exportation of goods subject to the order, but uses the "conclusive evidence, i.e., probable cause that the goods were made with forced labour" to issue a final decision (called "forced labour finding") which then allows authorities to seize the goods, as currently foreseen in the European Commission proposal.
  - It is regrettable that, currently, only one ultimate sanction is foreseen: the prohibition to place these products on the market, coupled with an obligation to dispose of existing products. Such a decision relies on a very high evidentiary standard with the **burden of proof being placed entirely on the Member State competent authority**. This means that **products under investigation will remain freely available on the market** pending the outcome of the investigation, in which time they can be readily rerouted to other markets, thereby depriving the Regulation of its effectiveness and essence.
  - Furthermore, the timeline allocated to the investigation process in the Parliament's compromise text is only 90 working days, compared to US practice where

investigations to issue a WRO by US CBP last from six to nine months on average. The high threshold coupled with the short time frame for an investigation will result in serious challenges in implementation and enforcement of the Regulation.

4. **Stakeholder engagement**. During the investigation process, competent authorities should conduct a meaningful impact assessment and engage with workers and their representatives to enable workers to use a potential ban as leverage to improve conditions and enable remediation and access to justice, as well as to identify and mitigate any potential unintended consequences on affected workers of imposing a ban. It is fundamental that the appropriate remediation and preventative measures are discussed and decided upon with relevant stakeholders, communities, workers and their representatives, including trade unions, to ensure they respond to the actual needs of affected workers and are credible, appropriate and crucially include reform of purchasing practices. Such measures should also be tied to the lifting of any product ban.
5. Current gaps regarding **enforcement** include:
  - First, in its focus on product-line level, the fact that forced labour is often a systemic pattern across an entire producer, manufacturer or importer (regardless of the product) should be recognised. Therefore, while identifying products is important as a starting point, forced labour should not be addressed in silos. The Regulation must explicitly include the scope to extend findings to all products from an entire production site or economic entity, given that forced labour will not be isolated to one product line within a facility.
  - Second, the Regulation must explicitly include the scope for bans on entire product groups from a region, such as cotton from Turkmenistan and the Uyghur Region. This element is crucial when it comes to addressing systemic state-imposed forced labour (SIFL). In the absence of a clear procedure for regional bans, this will vastly reduce the power of this law to address the pervasiveness of SIFL in EU supply chains and compel companies to remove it. The text should explicitly include the possibility to establish region-wide bans, and, where relevant, align their scope with forced-labour based sanctions (for example, under the EU global human rights sanctions regime) to ensure legislative coherence, impact and legal certainty for companies.
  - Third, a rebuttable presumption of forced labour clause must be built into the Regulation. The Commission needs to be empowered to allow for a presumption of forced labour in industries and regions where there is credible evidence of state-imposed forced labour. The onus would then be on the company to prove that their products have not been made with forced labour. We welcome the Parliament's introduction of such a presumption of forced labour within its amendments, however its position has limits. The text does not allow for the detention of products caught by the presumption pending a final determination, nor does it determine by when this final determination should be made. Therefore the result will be that products presumed to have been made with forced labour are able to circulate freely for an undetermined amount of time within the EU Market.
  - Fourth, the European Commission should be designated as a competent authority, to be able to conduct politically sensitive investigations (such as ones linked SIFL) or to contribute to the investigation process when appropriate and, in particular, when investigating in third countries is required.
6. **Transparency and traceability**. Under the Regulation, companies should also be required to map and publicly disclose their suppliers, sub-suppliers and business partners in their whole

value chains. If not, competent authorities, as well as petitioners, will face significant obstacles to identifying the presence of entities implicated in forced labour within a company's value chain. While we appreciate that the Commission's proposal requires companies to disclose details of their value chain, upon request and to the competent authorities only, when put under investigation(article 5(3)), this measure is far too weak to make any impact and enable efficient implementation of the regulation. **Making this essential information public, as well as the decisions on offenders, would also assist companies (and small and medium sized enterprises in particular)** to assess the risk of forced labour in their value chains and to undertake effective due diligence measures. It would also help the general public, concerned groups, organisations, communities and workers themselves to monitor the situation and submit better information on alleged violations to the competent authorities.

7. Beyond the lack of remediation for affected workers, a focus should be placed on **addressing the root causes of forced labour**. A set of **accompanying measures** would be required to support workers, trade unions, civil society, human rights defenders, small and medium enterprises, smallholders and local communities, wherever forced labour occurs. This could include, among others, capacity strengthening and funding to support communities and workers to address the root causes of abuses such as discrimination, power imbalances, unfair purchasing practices and production delays, lack of livelihood opportunities, the absence of a living wage, land rights, etc. These measures would empower affected workers and stakeholders to better understand and claim their rights and restore their own agency.
8. Finally, it is essential to ensure that all affected stakeholders, including but not only petitioners, should be **protected from retaliation** when engaging with companies and enforcement authorities either during the investigation or while discussing remediation measures. Confidentiality should be automatic (unless otherwise mentioned by the petitioner themselves) and the workers' condition as a potential victim of forced labour should take full precedence over any potential immigration enforcement action, for example, whether or not the investigation concludes that there is a situation of forced labour.

### **3. Next steps in the process**

To address these limitations and gaps in the Regulation proposal, Anti-Slavery International and our partners prepared a **model law** (attached below) featuring the key elements which we would like to see included in the European Commission's proposal, in order to create a worker-centered Regulation. **This Model Law is by no mean an imposition but rather an invitation to rethink parts of the proposal and open a dialogue for all stakeholders** to provide constructive suggestions for the proposal's improvement and to the benefit of all workers.

We continue to endorse the **earlier statements** made by us and partner organisations on the proposed Regulation as well as their submissions to this call. As the debate in the European Union continues, we urge all decision makers to consult with organisations representing workers around the world, to ensure that the Regulation is designed with their needs and interests at its core. We call on all Member State governments to ensure institutional negotiations remain swift and worker-centric.

In parallel, the European Union must continue its efforts to introduce complementary legislation and policy to address the root causes of forced labour in EU value chains, including the **Corporate Sustainability Due Diligence Directive**, reform of the **Union Custom Code**, as well as **trade and development policies** and EU Member States' **domestic labour and migration policies**.

# Model Regulation to prohibit the import and export of products made or transported with forced labour

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207 thereof, Having regard to the European Commission's proposed Directive on Corporate Sustainability Due Diligence, As a member of World Trade Organisation (WTO), the Union is committed to promoting a universal, rule-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the WTO, as well as an open, sustainable, and assertive trade policy. The scope of this Regulation will therefore include both products produced within the Union and products imported to the Union.

## CHAPTER I GENERAL PROVISIONS

### Article 1 Subject matter and scope

1. This Regulation lays down rules prohibiting the placing and making available on the Union market as well as the export from the Union market of products for which there is sufficient evidence they are, in-whole or in-part, made using forced labour, with a view to prohibiting the placing on the Union market or exporting of such products.

### Article 2 Definitions

1. For the purposes of this Regulation the following definitions shall apply:

(a) 'forced labour' means forced or compulsory labour as defined in Article 2 of the Convention on Forced Labour, 1930 (No. 29) of the International Labour Organisation, including forced child labour, taking into account the indicators set out in the ILO's 'Hard to See, Harder to Count' guidelines as set out in Article 4.

(b) 'state-imposed forced labour' means the use of forced labour as described in Article 1 of the Convention on the Abolition of Forced Labour, 1957 (No. 105) adopted by the International Labour Organization, including the use of forced labour as punishment for the expression of political views, for the purposes of economic development, as a means of labour discipline, as punishment for participation in strikes, or as a means of racial, religious or other discrimination.

(c) 'product' means any product that can be valued in money and is capable, as such, of forming the subject of commercial transactions, whether it is extracted, harvested, produced, manufactured, packaged, distributed, or transported, including working or processing related to a product at any stage of its supply chain;

(d) 'product made with forced labour' means a product for which forced labour has been used in whole or in part at any stage of its extraction, harvest, production, manufacture, packaging, distribution, or transport, including working or processing related to a product at any stage of its supply chain;

- (e) ‘economic operator’ means any natural or legal person or association of persons who is producing, importing, transporting, placing or making available products on the Union market or exporting products from the Union market;
- (f) ‘customs authorities’ means customs authorities as defined in Article 5, point (1), of Regulation (EU) No 952/2013;
- (g) ‘products entering the Union market’ means products from third countries intended to be placed on the Union market or intended for private use or consumption within the customs territory of the Union and placed under the customs procedure ‘release for free circulation’;
- (h) ‘placing on the market’ means the first making available of a relevant product on the Union market;
- (i) ‘making available on the market’ means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge and in the case where the product is offered for sale online or through other means of distance sales, the making available on the market is deemed to take place when the offer for sale is targeted at users in the Union;
- (j) ‘products leaving the Union market’ means products placed under the customs procedure ‘export’;
- (k) ‘release for free circulation’ means the procedure laid down in Article 201 of Regulation (EU) No 952/2013;
- (l) ‘export’ means the procedure laid down in Article 269 of Regulation (EU) No 952/2013;
- (m) ‘SMEs’ mean micro, small and medium-sized enterprises as defined in Directive 2013/34/EU;
- (n) ‘stakeholders’ means (i) workers and other individuals, groups, communities, trade unions, worker representatives or entities whose rights or interests are or could be affected by the forced labour as used by an economic operator, its subsidiaries or its business relationships; ii) other legal or natural persons defending human rights (‘human rights defenders’), including individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms and labour conventions, including the rights of workers, trade unions, indigenous peoples or other vulnerable stakeholders; and iii) organisations whose statutory purpose is the defence of human rights;
- (o) ‘vulnerable stakeholders’ means individuals and right-holders groups finding themselves in marginalised situations and situations of vulnerability, due to specific contexts or intersecting factors, including among others their sex, gender, age, race, ethnicity, class, caste, education, indigenous identity, migration status, disability, as well as social and economic status; which are the causes of differentiated and often disproportionate adverse impacts, and creates discrimination and additional barrier to participation and access to justice;
- (p) ‘substantiated concern’ means a well-founded reason, based on objective and verifiable information, for the competent authorities to suspect that products were likely made with forced labour.

### **Article 3 Prohibition**

1. Products shall not be placed or made available on the Union market or exported from the Union market if it has been established by the competent authorities, in accordance with Article 10, that those products have been made, in-whole or in-part, using forced labour.
2. The competent national authorities may determine, in accordance with Article 10, a violation in relation to products made with forced labour in either of the following cases:
  - a. a particular production site, or a group of production sites;
  - b. a particular operator or company, or group of operators or companies;
  - c. a particular transport vessel or fleet; or
  - d. a particular product group from a specific region or country in accordance with Article 11 on the presumption of forced labour.
3. The placement of a product on the Union market may, in accordance with the investigations and decision-making process set out in this Regulation, be excluded from free circulation in the EU, and products that have already entered may be recalled, provided they have not yet reached end-users.
4. Products produced in the EU and exported, and those imported into the EU are covered.

### **Article 4 Evidence of forced labour**

1. For the purposes of this Regulation, the existence of forced labour will be determined with reference to the indicators for forced labour set out by the ILO, which will be detailed by the European Commission in guidelines documents.
2. The indicators for forced labour will be determined by:
  - a. Involuntariness, namely work for which a person has not offered themselves voluntarily; and
  - b. Penalty, or menace of a penalty, namely where the work is performed under the menace of a penalty to the worker, imposed by an employer or third party.
3. Evidence is to be assessed with reference to the ILO ‘Hard to See, Harder to Count’ guidance.
4. Where there is evidence of one indicator present under each of subparagraphs (2(a)) and (2(b)), and where at least one of these indicators is ‘strong’ in accordance with the ILO guidance, there will be evidence of forced labour for the purposes of this Regulation.

## **CHAPTER II OBLIGATIONS OF MEMBER STATES AND THEIR COMPETENT AUTHORITIES**

### **Article 5 Competent authorities**

1. Member States shall designate one or more competent authorities responsible for carrying out the obligations arising from this Regulation.
2. The Commission shall make the list of the competent authorities publicly available on its website, which shall be accessible in all Member States languages. The Commission shall regularly update the list, based on relevant information received from Member States.
3. Member States shall ensure that the competent authorities have adequate powers and expertise to perform the obligations set out in Chapter II of this Regulation. Each Member State shall place

sufficient resources and means at the disposal of its competent authorities to enable them to perform their tasks as laid down in this Regulation.

#### **Article 6 Complaint procedure**

1. The Commission shall establish a centralised complaint mechanism to receive complaints and information regarding alleged or suspected forced labour, taking place within or outside the EU, from any natural or legal person, including workers or others affected or potentially affected by forced labour, civil society organisations, trade unions, affected communities, and any other individual or group that may have information regarding goods who alleged or suspected forced labour resulting in goods produced by forced labour.
2. Complaints may be submitted in relation to any of the categories mentioned under Article 3(3).
3. Complaints may be lodged anonymously. The complaint procedure should be formalised and secure.
4. The Commission shall determine the rules and procedure to assign complaints to the competent authorities. These rules will take into account the specifics of the complaint, the domicile of the economic operator and the capacities of the competent authorities in concerned Member States. The Commission may retain the power to investigate.
5. Member States shall grant competent authorities the power to investigate substantiated complaints, to make both preliminary and final decisions and issue orders of suspension, confiscation, disposal, fines and to recall products in accordance with this Regulation.
6. Competent authorities or the Commission shall make a decision pursuant to any complaint submitted in accordance with this Article, which decision shall be one of the following:
  - a. That the competent authority or the Commission will undertake an investigation in accordance with Article 8, or
  - b. That the competent authority or the Commission deems the complaint to not raise a substantiated concern of forced labour with reference to Article 4.
7. Competent authorities or the Commission shall provide complainants with written notification of the decision made in accordance with Paragraph 5 of this Article, and the reason for the decision, within two days of the decision being made, and within 30 days after the complaint is filed.
8. Member States should ensure that any decision made by competent authorities in respect of this Article, including a failure to make a decision, may be reviewed as an administrative decision of a public body, in accordance with the Member States legal framework.

#### **Article 7 Safeguarding of affected rights-holders**

1. Member States and the Commission shall ensure that the identity of the person or persons reporting complaints, providing evidence, and of any individuals who are potentially being subjected to forced labour in terms of the complaint, is not disclosed without the explicit consent of that or those persons, to anyone beyond the authorised staff members competent to receive or follow up on complaints. This shall also apply to any other information from which the identity of the reporting person may be directly or indirectly deduced.

## **Article 8 Investigation**

1. The competent authorities in Member States and the Commission shall have the power to launch investigations of their own accord, or in response of a complaint or information received in accordance with the complaint procedure in Article 6.
2. If the competent authority or the Commission finds, as a result of the investigation, that there is a substantiated concern that a product has been in-whole or in-part made with forced labour, it shall launch an impact assessment.
3. Once a competent authority or the Commission takes the decision to initiate an investigation in accordance with Paragraph 1 of this Article, it shall inform the Commission and the competent authorities of other Member States of such decision. The record thereof shall be included in the digital data-based system established in accordance with Article 22(3).
4. During the impact assessment as per Paragraph 2 of this Article, competent authorities or the Commission should determine the impacts of such prohibition on workers and other affected stakeholders, through engagement with stakeholders, including vulnerable stakeholders, and, where cooperative, national authorities of the country of the product in question. The assessment should take into account any preventative, corrective and remediation measures, as defined in Article 16, as well as the potential effectiveness of these measures in relation to preventing and remediating forced labour. The impact assessment will be based on the guidelines referred to in Article 21(d).
5. Based on the result of the impact assessment as described under Paragraph 4 of this Article, competent authorities or the Commission may decide to seize and/or recall products subjected to the investigation to prevent any sale or rerouting, pending the issuance of the order as defined in Article 10.
6. The Commission should establish a mechanism for coordination between competent authorities including labour agencies and custom authorities, at the EU level to ensure harmonisation of enforcement throughout the EU. For the purpose of this provision, the Commission shall adopt as appropriate delegated acts.
7. The Commission shall define priority control areas subject to enhanced customs controls, in particular in accordance with declarations of presumptions of forced labour established under Article 11, as per article 46 of Regulation (EU)952/2013.  
These priority control areas will be disclosed through the risk database established in accordance with Article 20 and in the digital data-based system established in accordance with Article 22(3).
8. When a decision to seize and/or recall a product is made, the competent authority or the Commission shall within two days of such decision, provide written notification of the investigation to the relevant economic operators, as well as any complainants. The competent authority or the Commission will equally notify customs authorities.
9. Each Member State shall ensure that the annual checks carried out by their competent authorities cover:
  - a. at least 10% of the operators placing, making available on or exporting from the Union market, and
  - b. 10% of the quantity of each of the relevant products placed or made available on or exported from their market.

### **Article 9 Review of the decision to seize**

1. An economic operator affected by a decision to seize made in accordance with Article 8(5) may request for the decision be reviewed within 15 working days, or five days for perishable goods, after the decision has been issued.
2. Along with its request for a review, the economic operator shall provide the competent authority with complete and substantive evidence on the case.
3. In cases where the review is based on the grounds that no forced labour has occurred or remediation has taken place, such evidence shall be provided in accordance with Article 16. The onus will be on the operator to prove that the requirements of remediation in Article 16 has been met.
4. In cases where the economic operator's products are not covered by the decision made under Article 8(8), the onus will be on the economic operator to provide complete and substantive evidence as to such, including but not limited to evidence resulting from the obligation under Article 15.
5. If the competent authority or the Commission considers that the economic operator has provided complete and substantive evidence, it may make a decision that the products be released for sale, free entry onto the market, importation, or exportation.
6. If the competent authority or the Commission does not find that the operator or importer has provided complete and substantive evidence, it will dismiss the request for a review of the seizure and provide the economic operator with notification of the reasons for this dismissal within two days of the decision to dismiss.

### **Article 10 Final decision**

1. After an investigation is carried out, competent authorities or the Commission should reach a decision without undue delay.
2. The decision shall be based on sufficient evidence of forced labour with reference to the indicators set out in Article 4, and shall consider any remediation measures as set out in Article 16, as well as any adverse impacts that the decision itself may have on potentially affected stakeholders. Any due diligence of the importer or any operators in the supply chain shall only be relevant insofar as it relates to evidence of remediation in compliance with Article 16.
3. Where a competent authority or the Commission has decided that the products were made in-whole or in-part with forced labour, it shall require for the seized and/ or recalled products to be disposed of. In addition, it shall make one or more of the following orders:
  - a. require the importer or operator to pay a fine; or
  - b. require the confiscation of any revenues gained by the operator or importer as a result of a transaction with the relevant products concerned.
4. Where a competent authority or the Commission has decided that the products were not made with forced labour it shall end the procedure and inform the Commission or the competent authority of other Member States. The decision should be recorded in the digital database established in accordance with Article 22(3). The competent authority should issue a decision that a violation has not taken place in conjunction with the decision to end the seizure as per Article 9(3).
5. The competent authority or the Commission will record the information regarding each of the above decisions on the central digital database in accordance with Article 22(3).

6. Member States should ensure that any decision made by competent authorities, including a failure to make a decision, or a decision not to investigate, may be reviewed as an administrative decision of a public body in accordance with the Member States legal framework.

#### **Article 11 Declaration of presumption of forced labour**

1. The Commission, after consultation with competent authorities, shall be empowered to declare a presumption of forced labour to prohibit products groups from specified countries or regions where there are credible reports of wide-spread forced labour, including state-imposed forced labour, in an entire product group in a specific industry.

2. The Commission should engage with actual or potentially affected stakeholders, including persons that are potentially being subjected to forced labour or their representatives, prior to issuing a presumption of forced labour, to assess the potential impact of declaring a presumption of forced labour.

3. The declaration shall immediately be entered into the central digital database in accordance with Article 20 and in the digital data-based system established in accordance with Article 22(3).

#### **Article 12 Rebuttal of a presumption by economic operators**

1. An economic operator affected by a presumption of forced labour made in accordance with Article 11 may request for the presumption to be rebutted with respect to the economic operator's products.

2. Along with its request for a rebuttal, the economic operator shall provide the Commission with complete and substantive evidence.

3. In cases where the review is based on the grounds that remediation has taken place, such evidence shall be provided in accordance with Article 16.

4. In cases where the economic operator's products are not covered by the decision made under Article 11, the onus will be on the economic operator to provide complete and substantive evidence as to such, including but not limited to evidence resulting from the obligation under Article 15.

5. If the Commission considers that the operator has provided complete and substantive evidence, it may make a decision that the products be released for sale, free entry onto the market, importation or exportation.

6. If the Commission does not find that the operator or importer has provided complete and substantive evidence, it will dismiss the request for a rebuttal of the presumption, and provide the economic operator with notification of the reasons for this dismissal within two days of the decision to dismiss.

#### **Article 13 Penalties**

1. In the event where an importer or operator circumvents or attempts to circumvent a ban or sanction imposed by a competent authority in accordance with this Regulation, or when an entity refuses or fails to cooperate with the customs authorities, such as by failing to provide the documents required, the competent authority shall be empowered to impose additional effective, proportionate and dissuasive penalties, such as pecuniary fines based on turnover, as per Article 10(2)(a).

#### **Article 14 Customs authorities**

1. Member States' customs authorities shall carry out the sanctions imposed by the Commission or competent authorities in terms of this Regulation.

2. Where customs authorities identify a product entering or leaving the Union market that may, in accordance with a decision received pursuant to Article 10, be in violation of Article 3, they shall suspend the release for free circulation or the export of that product. Customs authorities shall immediately notify the relevant competent authorities or the Commission of the suspension and record all relevant information in the digital database established in accordance with Article 22(3).

#### **Article 15 Traceability requirements**

1. A public digital traceability system shall be put in place by the European Commission to enable mapping and tracing of products' supply chains and information exchange regarding the manufacture and transport of products and in order to facilitate the accessibility of the information for competent authorities to implement this Regulation.

2. Member states shall require operators to publish on this digital system information relevant to the presence of forced labour, including location and type of production, relating to the operator's own operations, subsidiaries, suppliers, sub-suppliers, contractors, and business partners in the whole supply chain, within the bounds of commercial confidentiality, privacy, and competition law.

3. As per Article 21, European Commission shall issue sector-specific guidance to economic operators on the information required under Article 15(2).

4. Economic operators and importers shall be required to input the relevant information and data in the format that is compatible with this digital system, as set out in implementing legislation.

5. Member States shall ensure that data from their competent authorities are fed into the system on a continuous basis and ensure that such information is up to date.

#### **Article 16 Remediation**

1. Once an investigation is launched under Article 8 by the competent authority or Commission, it should also determine, as much as possible through engagement with relevant stakeholders, the appropriate remediation, prevention of future reoccurrence and mitigation measures.

2. Evidence of remediation needs to be provided to the competent authority or the Commission, and it needs to go beyond information provided by social audits and certification bodies. Competent authorities or the Commission will provide guidance as to suitable evidence per each case.

3. Evidence of remediation measures must include evidence of one or more of the following:

- a. financial and non-financial compensation, including compensation based on the duration and extent of the forced labour, and any harms suffered;
- b. restitution for the victims, to restore their position before the forced labour took place (for example, returning their passport);
- c. rehabilitation (for example, provision of treatment or counselling);
- d. effective preventative measures and guarantees of non-reoccurrence of forced labour; and where it is accompanied by one or more of the above measures, apologies.

4. Competent authorities or the Commission may lift the market prohibition once the economic operator proves that the forced labour has been remediated and that forced labour is no longer

present and that processes have been put in place to prevent harms from continuing or taking place again in the future.

5. Competent authorities or the Commission shall engage with relevant stakeholders, including persons that have been or are at risk of being subjected to forced labour and their representatives, prior to lifting any prohibition.

6. Member States and the Commission shall ensure that determinations on the cessation of forced labour should not occur in a way that undermines other fundamental rights.

### **Article 17 Monitoring**

1. The European Commission and competent authorities shall be required to monitor remediation and corrective actions taking place pursuant to Article 16.

2. Monitoring shall take place in cooperation with relevant stakeholders, including workers and others affected or potentially affected by forced labour, civil society organisations, trade unions, local and independent experts, international organisations, third country authorities, and other individuals or groups that may have information relating to forced labour.

3. The European Commission shall establish a public list of decisions made in accordance with Article 10, and presumptions of forced labour issued in accordance with Article 11. These public lists will be integrated within the risk database under Article 20.

4. Member States should require competent authorities to publish an annual report that includes information on the effectiveness of its enforcement of this Regulation, including on its investigation strategy, relevant criteria used for targeting inspections, and number of investigations carried out.

5. The Commission will publish an aggregated annual report including all member States reports, as well as information concerning its own proceedings.

### **Article 18 Support for SMEs**

1. The Commission and Member States may provide technical and other assistance and guidance to economic operators, considering the situation of SMEs, microenterprises, and natural persons, to facilitate compliance with the requirements of this Regulation.

2. Without prejudice to applicable State aid rules, Member States may financially support SMEs.

### **Article 19 Support for stakeholders**

1. The Commission and Member States shall provide support to stakeholders, including vulnerable stakeholders, and stakeholders in third countries, including by:

- a. Supporting workers, trade unions, civil society organizations, communities and human and environmental defenders in third countries, including through development aid, to enable them to actively monitor implementation and exercise their rights under the Regulation;
- b. Providing relevant and necessary information and instruments to support stakeholders' participation and issuing guidance, in multiple languages, on how to access and submit complaints to the complaint mechanisms set out in Article 6;
- c. Undertaking awareness raising campaigns about this Regulation, including in third countries where stakeholders and vulnerable stakeholders might be located;

- e. Promoting education for stakeholders, including in third countries where stakeholders and vulnerable stakeholders might be located, on workers' rights, the indicators of forced labour, and avenues for access to justice;
  - f. Providing financial and other support, including for stakeholders' capacity development.
2. EU Delegations and Member State embassies in third countries shall support the submission of complaints over substantiated concerns, including by actively providing guidance, practical assistance, and supporting protection measures.

## CHAPTER III COORDINATED ENFORCEMENT

### **Article 20 Database of forced labour risk areas or products**

1. The Commission shall call upon external expertise to provide an indicative, non-exhaustive, verifiable and regularly updated database of forced labour risks in specific geographic areas or with respect to specific products including with regard to state-imposed forced labour. The database shall be based on the guidelines referred to in Article 21 and relevant external sources of information from, amongst others, international organisations and third country authorities.
2. The Commission shall ensure that the database is made publicly available by the external expertise at the latest 24 months after the entry into force of this Regulation
3. The database shall be available in multiple languages.

### **Article 21 Guidelines**

In order to assist competent authorities to implement this Regulation and economic operators comply with this Regulation, and in order to ensure clarity of tasks and consistency of action among Member State competent authorities, the Commission shall issue guidelines at the later 18 months from the entry into force of this Regulation, which shall include the following:

- a. The application of the ILO indicators and the 'Hard to See, Harder to Count' guidance with respect to this Regulation;
- b. Sector-specific guidance on the information required under Article 15(2);
- c. A list of publicly available information;
- d. The steps to be followed by competent authorities or any other information the competent authorities may need in the practical implementation of any provision in Chapter II of this Regulation, and, where appropriate, any other Chapter.

### **Article 22 International Cooperation and Exchange of Information**

1. The competent authorities responsible for implementation of this Regulation in the Member States shall cooperate with each other and with the Commission to ensure compliance with this Regulation.
2. The competent authorities and the Commission shall also cooperate with relevant authorities of third countries to carry out investigations, as well as coordinate when it is relevant with investigations made by other countries and align with decisions made by other international entities. Member States' competent authorities and the Commission shall actively exchange knowledge and intelligence with third-country governments.

3. The European Commission shall create a coordination system at the EU level to support all competent authorities in Member States and ensure transparency of all procedures launched. It shall establish a digital data-based system to share information across competent authorities of Member States. There shall be information-sharing and engagement provisions between EU-level and Member State-level customs authorities regarding investigations.

#### **Article 23 Coordination body**

1. A coordination body shall be established at the EU level and tasked with carrying out the obligations arising from this Regulation, ensuring coordination and harmonisation of enforcement across Member States as well as international cooperation and exchange of information measures as in Article 20.

2. A comprehensive information-sharing system shall be established across customs authorities, also internationally.

3. The Commission shall place sufficient resources and means at the disposal of the coordination body to enable it to perform its obligations as laid down in this regulation.

4. The Commission shall also ensure that the coordination body has adequate powers and expertise to perform its obligations.

### **CHAPTER IV FINAL PROVISIONS**

#### **Article 24 Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Article 3(2) of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### **Article 25 Entry into force and date of application**

1. This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

2. This Regulation shall apply from 24 months from its entry into force.

3. This Regulation shall be binding in its entirety and directly applicable in all Member States.

#### **Article 26 Review and annual reporting**

1. No later than three years after the entry into force, the Commission shall carry out a first review of this Regulation with particular attention to the effectiveness of the instrument, proposing additional measures where deemed appropriate.

2. No later than one year after the entry into force, the Commission shall present annually a report to the European Parliament and the Council on the implementation of the regulation.